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6 **UNITED STATES DISTRICT COURT**  
7 **SOUTHERN DISTRICT OF CALIFORNIA**  
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9 LUIS MADRIGAL ALVAREZ,  
10  
11 vs.  
12 JANET A. NAPOLITANO, Secretary of  
13 Homeland Security, et al.,  
14 Respondents.

CASE NO. 09cv2399 WQH (POR)

**ORDER**

14 HAYES, Judge:

15 The matter before the Court is Petitioner Luis Madrigal Alvarez's Motion for Leave to  
16 Proceed *In Forma Pauperis* (Doc. # 3).  
17

18 **DISCUSSION**

19 On October 23, 2009, Petitioner filed his Petition for Writ of Mandamus (Doc. # 1).  
20 On October 29, 2009, the Court dismissed the action *sua sponte* without prejudice for failure  
21 to pay the \$350 filing fee or to file a Motion to Proceed *In Forma Pauperis* (Doc. # 2). On  
22 November 3, 2009, Petitioner filed his Motion to Proceed *In Forma Pauperis* accompanied by  
23 a declaration about his financial circumstances (Doc. # 3).

24 All parties instituting a civil action, suit, or proceeding in a district court of the United  
25 States, other than a petition for writ of habeas corpus, must pay a filing fee of \$350.00. 28  
26 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is  
27 granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez*  
28 *v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "To proceed in forma pauperis is a privilege not  
a right." *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

1 In his accompanying declaration, Petitioner states that he is not employed. Petitioner  
 2 states he was last employed in late 2006, earning about \$480.00 per week (Doc. # 3 at 2). In  
 3 the past twelve months, Petitioner has not received any income. *Id.* He has a negative balance  
 4 in his checking account, no savings, and does not own an automobile. *Id.* He owes his sister  
 5 \$1500.00 for paying his immigration bond. *Id.* He is supported by his sister because he does  
 6 not currently have authorization to work in this country. *Id.*

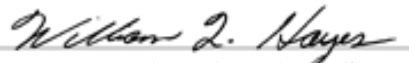
### 7 ORDER

8 After considering Petitioner's motion and the accompanying affidavit, the Court  
 9 concludes that Petitioner is entitled to proceed *in forma pauperis*. Accordingly, Petitioner's  
 10 Motion to Proceed *In Forma Pauperis* (Doc. # 3) is GRANTED. The Clerk of the Court shall  
 11 file the complaint without prepayment of the filing fee.

12 The Clerk shall issue the summons, provide Petitioner with a certified copy of both this  
 13 Order and his Complaint, and forward them to Petitioner along with a blank U.S. Marshal  
 14 Form 285 for each Respondent named in his Complaint. Petitioner shall complete the Form  
 15 285s and forward them to the United States Marshal. The U.S. Marshal serve a copy of the  
 16 Complaint and summons upon Respondent as directed by Petitioner on each U.S. Marshal  
 17 Form 285. All costs of service shall be advanced by the United States. *See* 28 U.S.C. §  
 18 1915(d); FED.R.CIV.P. 4(c)(2).

19 Petitioner shall serve upon Respondent or, if appearance has been entered by counsel,  
 20 upon Respondent's counsel, a copy of every further pleading or other document submitted for  
 21 consideration of the Court. Petitioner shall include with the original paper to be filed with the  
 22 Clerk of the Court a Certificate of Service stating the manner in which a true and correct copy  
 23 of any document was served on Respondent, or counsel for Respondent, and the date of  
 24 service. Any document received by the Court which has not been filed with the Clerk or which  
 25 fails to include a Certificate of Service will be disregarded.

26 DATED: November 12, 2009

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 28 **WILLIAM Q. HAYES**  
 United States District Judge